

#### Members

Rep. Jackie Walorski, Chairperson  
Rep. Ryan Dvorak  
Sen. Luke Kenley  
Sen. John Broden  
Art Harris  
Tobias Buck  
Jeff Miller  
Mark Stuaan  
Sue Shadley  
Mayor John Zumer  
Mayor Shannon Buskirk  
Jim Flannery  
Carol McDowell  
John Land  
Gordon Durnil  
Stephen Johnson  
Tom Easterly  
Robert Carter



## ENVIRONMENTAL CRIMES TASK FORCE

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Matt Nagle, Fiscal Analyst for the Task Force

Authority: P.L. 63-2005 (SEA 195-2005)

### MEETING MINUTES<sup>1</sup>

**Meeting Date:** October 12, 2006  
**Meeting Time:** 9:00 AM  
**Meeting Place:** State House, 200 W. Washington St., Room 431  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 6

**Members Present:** Rep. Jackie Walorski, Chairperson; Rep. Ryan Dvorak; Sen. Luke Kenley; Art Harris; Jeff Miller; Sue Shadley; Mayor John Zumer; Mayor Shannon Buskirk; Jim Flannery; John Land; Gordon Durnil; Stephen Johnson; Tom Easterly; Robert Carter.

**Members Absent:** Sen. John Broden; Tobias Buck; Carol McDowell; Mark Stuaan.

#### 1. Call to Order

The meeting was called to order at 9:10 A.M. Rep. Walorski asked Sen. Kenley to chair the meeting.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

## 2. Opening Comments

Sen. Kenley began the meeting with comments on changes made to the environmental crimes bill draft since the last meeting of the Task Force. He explained the reasons for criminalizing reckless violations in addition to knowing and intentional violations, for the "damage to the environment" standard, and for the unjust enrichment provisions.

## 3. Public Testimony

Sen. Kenley opened the meeting to public testimony.

Patrick Bennett, Indiana Manufacturers Association, praised the progress made in the draft, indicating that the draft strikes an appropriate balance by stating the requisite mental state, the nature of the prohibited act, the nature of the damage caused, and the defense of lack of knowledge.

Chips Everhart, Rose Acre Farms, expressed support for the overall concept embodied in the draft and concern that certain provisions might be overly restrictive. The permits under which Rose Acre Farms currently operates require the disposition of all manure produced and allow flexibility in acquiring new customers and in changing the distribution of manure during the five year term of a permit. He would like the new law to preserve that flexibility.

Janet McCabe, Improving Kids' Environment, questioned the following:

- (1) Whether the criminal standard of damage to the environment that renders it unfit for certain life is sufficiently specific.
- (2) Whether a court should be required (instead of permitted) to consider any improper economic benefit received by the defendant in determining the amount of a criminal fine.
- (3) Whether for purposes of the draft a violation includes both a prohibited act and a failure to perform a required act.
- (4) Whether the Department of Environmental Management (IDEM) has adequate authority under the draft to deal with violators of commissioner's orders and agreed orders.
- (5) Whether for purposes of violations concerning wetlands, the definition of wetlands should include all wetlands instead of state regulated wetlands, and whether wetlands mitigation should have any bearing on a wetlands prosecution.

Vince Griffin, Indiana Chamber, informed the Task Force that the Indiana Chamber is working with its membership and other business groups to provide timely comments on the draft.

Justin Schneider, Indiana Farm Bureau, who could not attend, submitted written comments (Exhibit #1).

Bill Wagner, Sommer Barnard, commented on the causation of damage in a criminal offense, indicating that conspiratorial crimes and criminal recklessness do not necessarily require proving actual damage. He also suggested that expert opinions would be required to determine the extent to which a violation renders the environment unfit for certain life.

Lee Botts urged the Task Force to pay close attention to an ordinance in Lake County to create an Environmental Law Enforcement Task Force (ELETf). She sees the ordinance as an attempt by the Lake County Sheriff to assert authority to collect environmental penalties that would otherwise be collected by the state.

#### 4. Task Force Discussion

Sen. Kenley thanked the members of the public for their participation, assured them that the Task Force will consider their comments, and advised all interested parties that they will be better served by making their views known to the Task Force during the drafting process rather than during the upcoming session of the General Assembly.

Sue Shadley and Stephen Johnson commented that a criminal violation occurs when there is a duty to act and a failure to act, not only when a prohibited act occurs.

Sen. Kenley distributed the comments of Mark Stuaan (Exhibit #2), who could not attend, and asked the Task Force members to consider them.

Several members discussed whether it is appropriate to criminalize violations of state administrative rules. Tom Easterly believes that certain rule violations merit criminal penalties, and that it is not practical to address all of those violations in statutes. Stephen Johnson noted that the Task Force was formed in part to recommend a change to the current law that criminalizes rule violations. Tom Easterly stated that the criminal violation standard in the draft is high in that it requires both a rule violation and damage to the environment. Stephen Johnson expressed concern that the requirement to prove damage places a great burden on prosecutors and suggested that a requirement for proof of damage is inappropriate if the nature of the violation alone indicates that damage occurred. Sue Shadley expressed concern that criminal violations should be reserved to cases where there is egregious environmental damage that is not sufficiently addressed by civil penalties. Rep. Dvorak noted that many current crimes do not require proof of damage.

Tom Easterly stated that there are many cases where reckless behavior that results in environmental damage should be considered criminal. Rep. Dvorak and Stephen Johnson suggested that crimes involving reckless behavior should result in penalties less severe than those involving knowing or intentional behavior.

Mayor Zumer stated that emphasis should be placed more on the severity of the environmental damage than on the level of intent. He also expressed concern that civil penalties for environmental damage often cannot be enforced because of the financial condition of the offender. Mayor Buskirk offered an example where the city incurred significant expense to remediate groundwater contamination and was compelled to seek recovery from the dry cleaner that released the contaminant.

Jim Flannery questioned whether the roles of IDEM and the Indiana Department of Natural Resources (IDNR) in the prosecution of environmental crimes should be addressed in the draft, noting that the creation of the ELETf makes the division of prosecutorial responsibility between the state and local entities less clear. Rep. Walorski agreed that the absence of clearly defined roles for IDEM and IDNR could lead to local confusion concerning environmental prosecutions. Robert Carter explained how IDNR currently gets involved in local prosecutions. Tom Easterly agreed that the agency roles could be better defined.

Rep. Dvorak suggested that the "serious bodily injury" element of proposed IC 35-43-1-5 weakens current law, which does not include such an element.

Sen. Kenley thanked all present for their comments, which will be considered for future proposed amendments to the bill draft.

5. Next Meeting

The next meeting will be held at 10:00 A.M. on November 9, 2006, in a room to be announced.

6. Adjournment

The meeting was adjourned at 10:35 A.M.